

1 MIRCH & MIRCH
2 KEVIN J. MIRCH, ESQ.
3 NV Bar No. 000923
4 MARIE C. MIRCH, ESQ.
5 NV Bar No. 6747
6 320 Flint Street
7 Reno, Nevada 89501
(775) 324-7444

8 Attorneys for Plaintiff

9
10 IN THE UNITED STATES DISTRICT COURT
11
12 DISTRICT OF NEVADA

13 KEVIN J. MIRCH, ESQ.

14 Plaintiff,

v.

15 Case No. 3:05-CV-000641-RLH-RAM

16 BRUCE BEESLEY, ROB BARE,
17 BRIDGET ROBB PECK,
18 DONALD CHRISTENSEN, STATE BAR
19 OF NEVADA, DOES I -X
20 A-Z Corporations,

21 Defendant.

22 /

23 **REPLY TO OPPOSITION TO MOTION FOR STAY OF ACTION**

24 COMES NOW, Plaintiff, KEVIN MIRCH, ESQ., by and through his counsel
25 of record, MIRCH & MIRCH, MARIE C. MIRCH, ESQ., and Hereby replies to the
26 Opposition to Motion for Stay filed on behalf of the Defendants. This Reply is based
27 on the accompanying points and authorities, affidavits, exhibits and pleadings on file
herein.

28 **POINTS AND AUTHORITIES**

29 Plaintiff has filed a motion to stay this proceeding pending a criminal action
30 which was recently filed in State Court against Kevin Mirch. The reason for this
31 request is to protect Mr. Mirch's Fifth Amendment right. Defendants have opposed
32 the motion, claiming that the sole purpose of the present suit is "to forestall and

1 obstruct State Bar Disciplinary Proceedings scheduled to commence against Mirch on
2 July 13, 2006". This statement ignores the fact that there are a number of civil claims
3 against the Defendants aside from that for injunctive relief. The claims include: 1)
4 conspiracy, 2) violation of due process, 3) breach of covenant of good faith and fair
5 dealing, 4) tortious interference with business and 5) injunctive relief.

6 The suit was initiated in November, 2005. On April 19, 2006, Defendants filed
7 a motion to dismiss. At that time, Mr. Mirch had just suffered a stroke on April 1,
8 2006, and sought extensions of time to oppose the motions to dismiss. The most recent
9 extension of time was until September 12, 2006.

10 On August 30, 2006, Mr. Mirch retained attorney David Houston to represent
11 him in regard to criminal charges that had been filed in State Court. Mr. Mirch denies
12 all charges. As a result of the criminal proceedings. Mr. Mirch has moved this Court
13 to stay the civil action in order to preserve his Fifth Amendment rights. Defendants
14 claim that this request fails in logic, because Mr. Mirch has already made statements
15 in the First Amended Complaint, and all that is left for him to do is a legal argument
16 to support the same. However, just because statements were made prior to the criminal
17 complaint being filed, does not deny Mr. Mirch his Fifth Amendment Rights against
18 making or defending any statements at this time.

19 Finally, the logic which ties the two lawsuits is the following: The present suit
20 alleges improper use of State resources by politically established attorneys in order to
21 obstruct justice against Mirch. The false criminal allegations against Mirch are yet
22 another example of the use of the "system" to punish Mr. Mirch, and could very well
23 be related to the allegations contained in the First Amended Complaint. The extent of
24 the relationship cannot be determined without discovery in the criminal matter.

25 Mr. Houston has been consulted on this matter and has advised Mr. Mirch not
26 to make any statements in order to protect his Fifth Amendment rights. This includes
27 statements which may be made in the present suit. Mr. Houston was in a federal trial
28

1 before Judge McKibbon the week of September 11 - 15, 2006. There has not yet been
2 any discovery in the criminal case, nor is there a trial date set. Nevertheless, it is
3 proper that this Court enter a stay in this matter to afford Mr. Mirch the opportunity to
4 receive discovery from the State in the criminal matter to evaluate its relationship to
5 the present action. The Court may wish to conduct a status hearing at a later date to
6 see how the criminal action has progressed and determine the length of time needed for
7 the requested stay.

8 **LEGAL ANALYSIS AND ARGUMENT**

9 In their opposition to motion for stay, the Defendants argue that Mr. Mirch must
10 demonstrate “either a probability of success on the merits and the possibility of
11 irreparable injury, or that serious legal questions are raised, and the balance of
12 hardships tips sharply in [Mirch’s] favor” *Abbassi v. INS*, 143 F.3d 513 (9th Cir.
13 1998). The potentially “serious legal question” raised is Mr. Mirch’s Constitutional
14 right against self incrimination in the criminal matter. The competing hardships are the
15 inconvenience to Defendants to have the suit put on hold, versus the hardship imposed
16 by violation of Mr. Mirch’s Fifth Amendment rights. There is no comparison of these
17 hardships. The violation of the Fifth Amendment rights could be irreparable against
18 Mr. Mirch.

19 Defendants acknowledge that a “further short extension for the opposition may
20 be warranted”. This is true. An extension is warranted at least until discovery is
21 completed in the criminal matter. At that time, Mr. Mirch and Mr. Houston can
22 evaluate if and how Mr. Mirch can proceed with this lawsuit without exposing himself
23 to Fifth Amendment issues.

24 ///

25 ///

26 ///

27 ///

CONCLUSION

Based upon the foregoing, it is respectfully requested that this Court grant a stay of this action pending resolution of the criminal matter.

DATED this 19th day of September, 2006.

LAW OFFICE OF MIRCH & MIRCH

By: /s/

MARIE C. MIRCH, ESQ.
NV SBN: 6747
320 Flint Street
Reno, NV 89501
Attorneys for Plaintiff